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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/528,500	03/18/2005	Silvia Berlanga de Moraes Barros	ABARR.0101	4409

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EXAMINER	
TATE, CHRISTOPHER ROBIN	
ART UNIT	PAPER NUMBER
1655	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/23/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/528,500	DE MORAES BARROS ET AL.	
	Examiner	Art Unit	
	Christopher R. Tate	1655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *14-23* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *14-23* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

The preliminary amendment filed 18 March 2007 canceling claims 1-13 and adding new claims 14-23 has been received and entered.

Claims 14-23 are presented for examination on the merits.

Claim Objections

Claim 14 is objected to because of the following informalities: In line 2, the species "*unmbellàta*" is misspelled. The correct spelling is --*umbellata*--.

In claim 18, the term "propyleneglycol" (line 3) should be divided into two words: --propylene glycol--.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 14-23 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In new claim 14, the recited range of 4-nerolidylcatechol ("a range from 0.005 to 20.2%") within the instantly claimed composition is deemed new matter. That is, the specification (including the original claims) supports a range from 0.005 to 20.0% (see, e.g., original claims 5 and 8). However, the Examiner could not find support for an upper range of 20.2% (as set forth in new claim 14) within the instant specification.

Applicant is required to cancel the new matter in the reply to this Office Action or, alternatively, to particularly point to adequate support for this upper range limitation.

In addition, the instant specification fails to provide an adequate written description with respect preparing a standardized extract of *Pothomorphe umbellata* which when added to a composition provides an overall composition containing the instantly claimed ranges of 4-nerolidylcatechol (on the basis of the standardized extract) therein. That is, the specification appears to be silent in terms of describing to one of skill in the art how to make the instantly claimed standardized extract of *Pothomorphe umbellata* as it relates to an overall composition containing 0.005 to 20.0% (or 20.2%) of 4-nerolidylcatechol (in the form of the extract) therein. It should be noted that the instant specification alludes to the fact that the antioxidant activity demonstrated by various prior art *Pothomorphe umbellata* extract preparations may be due to not just to the compound 4-nerolidylcatechol, but also to the presence of other additional compounds within such extract preparations that contribute to their observed enhanced antioxidant activity - as compared to the antioxidant activity displayed by the isolated compound 4-nerolidylcatechol alone (see, e.g., page 6, line 25 - page 7, line 5 of the instant specification) - which would also suggests that the steps by which the recited "standardized extract" is prepared would necessarily

be essential in terms of making a standardized extract of *Pothomorphe umbellata* for incorporation into an overall composition containing 0.005 to 20.0% (or 20.2%) of 4-nerolidylcatechol (contained within the standardized extract) therein (as instantly claimed) - including with respect to its functional (enhanced antioxidant) ability to treat the various skin afflictions instantly claimed (further, without this information, how would the skilled artisan properly compare/distinguish prior art *Pothomorphe umbellata* extract preparations from the instantly claimed *Pothomorphe umbellata* extract preparation? - see art rejections below for additional information).

Accordingly, the instant specification lacks an adequate written description as to the essential extraction steps necessary to actually prepare a "standardized extract of *Pothomorphe umbellata*" which contains the instantly claimed ranges of 4-nerolidylcatechol therein.

Not withstanding the USC 112, first paragraph rejection above (concerning lack of written description), claims 20-23 are also rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for treating the various claimed skin afflictions, does not reasonably provide enablement for preventing such skin afflictions. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention commensurate in scope with these claims.

Although the specification lacks an adequate written description as to the essential steps necessary to make the instantly claimed "standardized extract of *Pothomorphe umbellata*" (as discussed above), Applicants have reasonably disclosed/demonstrated that such *Pothomorphe umbellata* extracts are useful as a therapeutic agent for treating the various skin afflictions

instantly claimed (i.e., for treating photodamaged skin, cutaneous aging, and/or skin cancer). However, the claims also encompass using the claimed extract to prevent such skin afflictions which is clearly beyond the scope of the instantly disclosed/claimed invention. Please note that the term "prevent" is an absolute definition which means to stop from occurring and, thus, requires a higher standard for enablement than does "treating", especially since it is notoriously well accepted in the medical art that the vast majority of afflictions/disorders suffered by mankind cannot be totally prevented with current therapies (other than certain vaccination regimes) - including preventing such skin afflictions as skin photodamage, cutaneous aging, and skin cancer (which clearly are not recognized in the medical art as being a totally preventable skin afflictions) Please note that, as humans age, they all experience - at least to some degree - the first two skin afflictions. In addition, many humans who spend a considerable amount of time outside experience the third skin affliction - i.e., skin cancer, which is also not recognized in the medical art as being totally preventable).

Accordingly, it would take undue experimentation without a reasonable expectation of success for one of skill in the art to make and/or use the instantly claimed *Pothomorphe umbellata* extract in a manner commiserate with preventing the various recited skin afflictions, as instantly claimed.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 14-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 14 is rendered vague and indefinite by the phrase "a standardized extract of *Pothomorphe umbellata* which contains 4-nerolidylcatechol a range of 0.005-20.2% in the composition". Based upon the lack of written description concerning the instantly claimed extract (as discussed in detail above) it is unclear as to the actual meaning of this limitation - i.e., what type of extract is this actually defining (e.g., an alcoholic extract or something else)? In addition, it is unclear as to what this percentage range within the overall composition is relative to - e.g., is this percentage range by weight, by volume, or something else?

Claims 14 and 20 are rendered vague and indefinite by the phrase "[C]omposition on basis of *Pothomorphe umbellata* extract" (line 1 of claim 14 and lines 1-2 of claim 20). It is very unclear as to what this ambiguous phrase is attempting to define - i.e., does the composition actually comprise a *Pothomorphe umbellata* extract or not. For example, this phrase could be interpreted to mean a composition that is based upon (i.e., mimics) a composition that contains this extract, but not that the composition itself does not actually contain the extract (just something that mimics it).

Claims 15-17 are rendered vague and indefinite by the phrase "comprising a composition which is presented for ...". Firstly, it is unclear if the phrase "a composition" therein is referring to the composition of claim 14 or to some other composition. Secondly, it is unclear as to how and in what way such a composition is "presented" - e.g., is the composition actually in the form of gel or is it merely presented in some form for future incorporation into a gel?

Claim 20 is also rendered vague and indefinite by the phrase "topically administered in a way to allow satisfactory therapeutic response" (lines 3-4). It is unclear by this ambiguous phrase as to what type of therapeutic response is being defined/envisioned (e.g., is the therapeutic response such that the skin becomes moisturized, UV-protected, less damaged?).

Claims 21-23 are rendered vague and indefinite by the phrase "comprising an ...activity" because these claims depend from the method of claim 20. Accordingly, it is unclear as to the context of this phrase - e.g., is the composition administered in an amount to provide the recited activities, does the extract within the composition have the recited activities, or something else?

All other claims depend directly or indirectly from rejected claims and are, therefore, also rejected under USC 112, second paragraph for the reasons set forth above.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 14-17 and 20-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Ropke et al. (Free Radical Biol. Med., Vol 33, Issue 2, Abstract #527, 15 July 2002).

A composition comprising an extract of *Pothomorphe umbellata*, whereby the composition contains 0.005 to 20.2% (by wt, by vol?) of 4-nerolidylcatechol (on the basis of the *Pothomorphe umbellata* extract) therein is apparently claimed, as well as a method comprising topically applying a *Pothomorphe umbellata* extract.

The cited reference teaches a topical gel composition comprising an extract of *Pothomorphe umbellata*, whereby the gel compositions comprises 0.1% 4-nerolidylcatechol (on the basis of the *Pothomorphe umbellata* extract) therein. This reference also teaches topically applying the gel compositions to the skin of hairless mice (see Abstract# S527). Please note that the topical application of the reference extract gel preparation would inherently provide one or more of the functional effects instantly claimed, including with respect to preventing such skin afflictions.

Therefore, the cited reference is deemed to anticipate the instant claims above.

Claims 14-17 and 20-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Ropke et al. (Annals of the 14th National Cosmetology Congress of the Brazilian Cosmetology Assoc, 2000 - Entire English Translation of this document also enclosed).

The cited reference teaches a topical compositions presented in a gel form (i.e., within diadermine - an oil/water emulsion) comprising an extract of *Pothomorphe umbellata*, whereby the topical compositions comprises 0.2%, 0.05, 0.1, 0.2, and 2% (p/p) of 4-nerolidylcatechol therein. This reference also teaches topically applying the topical compositions to the skin of hairless mice (see entire English translation including pages 2-5, 7-9, 13-14, 16, and final paragraph on page 18). Please note that the topical application of the reference extract topical

preparation would inherently provide one or more of the functional effects instantly claimed, including with respect to preventing such skin afflictions.

Therefore, the cited reference is deemed to anticipate the instant claims above.

Claims 14-17 and 20-23 are rejected under 35 U.S.C. 102(a) as being anticipated by Ropke et al. (Intl. J. Pharmaceutics, December 2002).

The cited reference teaches a topical gel composition comprising an extract of *Pothomorphe umbellata*, whereby the gel compositions comprises 0.1% 4-nerolidylcatechol (on the basis of the *Pothomorphe umbellata* extract) therein. This reference also teaches topically applying the gel compositions to the skin of hairless mice (see entire document). In addition, this reference discloses that in a previous study, they evaluated *P. umbellata* extracts incorporated into topical formulations so as to provide final concentrations of 0.05, 0.1, 0.2, and 2% 4-nerolidylcatechol therein (see page 110, first column, of the first cited reference). Please note that the topical application of the reference extract gel preparation would inherently provide one or more of the functional effects instantly claimed, including with respect to preventing such skin afflictions.

Therefore, the cited reference is deemed to anticipate the instant claims above.

Applicant cannot rely upon the foreign priority papers to overcome the USC 102(a) rejections above because a translation of said papers has not been made of record in accordance with 37 CFR 1.55. See MPEP § 201.15.

Claim Rejections - 35 USC § 102/103

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 14 and 15 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Barros et al. (Ciencia e Cultura, 1996) or over Desmarchelier et al. (Planta Med, 1997).

Each of the cited references teaches a composition comprising an alcoholic (ethanolic - Barros et al; methanolic - Desmarchelier et al) extract of *Pothomorphe umbellata* having strong antioxidant activity (such as instantly disclosed) which each reference expressly discloses contain the compound 4-nerolidylcatechol - apparently within the instantly claimed percentage range (as best understood) - therein (see entire documents). Please note that given the lack of guidance (written description) provided by the instant specification in terms of making the instantly claimed *Pothomorphe umbellata* extract (as discussed above), the reference extract compositions each appear to be the same as that instantly claimed (as best understood). Consequently, the claimed *Pothomorphe umbellata* extract appears to be anticipated by each of the cited references.

In the alternative, even if the claimed *Pothomorphe umbellata* extract is not identical to the referenced *Pothomorphe umbellata* extracts with regard to some unidentified characteristics, the differences between that which is disclosed and that which is claimed are considered to be so slight that the referenced *Pothomorphe umbellata* extracts are likely to inherently possess the same characteristics of the claimed *Pothomorphe umbellata* extract particularly in view of the similar characteristics which they have been shown to share. Thus, the claimed *Pothomorphe umbellata* extract would have been obvious to those of ordinary skill in the art within the meaning of USC 103.

Accordingly, the claimed invention as a whole was at least prima facie obvious, if not anticipated by the reference, especially in the absence of sufficient, clear, and convincing evidence to the contrary.

Claims 14, 15, and 20-23 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Uchiyama et al. (JP 2001122763 - full computer-assisted English translation enclosed) - with evidence provided by Barros et al. (Ciencia e Cultura, 1996) and Desmarchelier et al. (Planta Med, 1997)*.

Uchiyama et al. teach a topical skin composition comprising an extract of *Pothomorphe umbellata* (including an alcoholic extract such as an ethanolic or methanolic extract - please note, as evidenced by Barros et al. and Desmarchelier et al., such an alcoholic extract would inherently comprise the naturally-occurring compound 4-nerolidylcatechol - see entire documents) as an active skin therapeutic ingredient therein (e.g., useful against skin aging caused by ultraviolet rays among other therapeutic effects), as well as topically applying such a

composition to the skin (please also note that topical application of the reference *Pothomorphe umbellata* extract would inherently prevent the recited skin afflictions, as instantly claimed), including applying to human skin fibroblasts. Uchimyama et al. also teach that the extract composition has antioxidant activity (i.e., oxygen-eliminating ability) - such as instantly disclosed (see entire English translation including paragraphs [0007] - [0016], [0021], [0028], [0034]-0035], [0037], and Tables). Again, please note that given the lack of guidance (written description) provided by the instant specification in terms of making the instantly claimed *Pothomorphe umbellata* extract (as discussed above), the reference extract composition appears to be the same as that instantly claimed (as best understood). Consequently, the claimed *Pothomorphe umbellata* extract appears to be anticipated by the cited reference.

In the alternative, even if the claimed *Pothomorphe umbellata* extract is not identical to the referenced *Pothomorphe umbellata* extract with regard to some unidentified characteristics, the differences between that which is disclosed and that which is claimed are considered to be so slight that the referenced *Pothomorphe umbellata* extract is likely to inherently possess the same characteristics of the claimed *Pothomorphe umbellata* extract particularly in view of the similar characteristics which they have been shown to share. Thus, the claimed *Pothomorphe umbellata* extract would have been obvious to those of ordinary skill in the art within the meaning of USC 103.

Accordingly, the claimed invention as a whole was at least prima facie obvious, if not anticipated by the reference, especially in the absence of sufficient, clear, and convincing evidence to the contrary.

With respect to the USC 102/103 rejections above, please note that the Patent and Trademark Office is not equipped to conduct experimentation in order to determine whether Applicants' *Pothomorphe umbellata* extract differs (especially given that the instant specification fails to teach how to make the instantly claimed standardized extract) and, if so, to what extent, from the discussed references. Therefore, with the showing of the references, the burden of establishing non-obviousness by objective evidence is shifted to the Applicants.

* Please note that the Barros et al. and Desmarchelier et al. references cited in the USC 102/103 rejection immediately above are not being cited as prior art, but rather as evidence to show an inherent property of the *Pothomorphe umbellata* extract taught by Uchiyama et al. (i.e., that the alcoholic extract taught by Uchiyama et al. inherently contains the naturally-occurring compound 4-nerolidylcatechol therein).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 14-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ropke et al. (Free Radical Biol. Med., Vol 33, Issue 2, Abstract #527, 15 July 2002) and Ropke et al. (Annals of the 14th National Cosmetology Congress of the Brazilian Cosmetology Assoc, 2000 - Entire English Translation of this document also enclosed, in view of Wheeler (US 6,165,479) and, if necessary, the admitted state of the art.

The two cited Ropke et al. references each beneficially teach a topical gel compositions having strong therapeutic antioxidant activity which comprises an extract of *Pothomorphe umbellata*, whereby the gel compositions comprises 4-nerolidylcatechol (on the basis of the *Pothomorphe umbellata* extract) within the instantly claimed ranges therein. These references also teach topically applying the gel compositions to the skin of hairless mice (see Abstract# S527 of first Ropke et al. reference; and entire English translation including pages 2-5, 7-9, 13-14, 16, and final paragraph on page 18 of the second Ropke et al. reference). Neither of the Ropke et al. references expressly teach providing the skin therapeutic *Pothomorphe umbellata* extract within a skin gel composition containing carboxymethylcellulose, propylene glycol, and methylparaben, as instantly claimed.

Wheeler beneficially teaches that carboxymethylcellulose, propylene glycol, and methylparaben are well known conventional ingredients within skin therapeutic compositions such as skin gels, including those containing an antioxidant therein (see entire reference including col 2, line 58 - col 4, line 67). Further, as readily admitted by Applicants, the instantly claimed dermocosmetic composition can be prepared in accordance with prior art methods for topical use - such as one containing carboxymethylcellulose, propylene glycol, and methylparaben (see, e.g., page 11, lines 1-5).

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to incorporate the *Pothomorphe umbellata* extract preparation having strong therapeutic antioxidant activity as taught by each of the Ropke et al. references into a conventional skin therapeutic formulation (e.g., as an effective antioxidant) - including a skin gel, containing the commonly-employed skin care ingredients carboxymethylcellulose,

propylene glycol, and methylparaben therein based upon the beneficial teachings provided by Wheeler, as well as (if necessary) the admitted state of the prior art, with respect to their well known conventional use therein, as discussed above. Accordingly, the adjustment of this and other types of conventional working conditions (e.g., determining an appropriate amount range of such conventional ingredients therein) is deemed merely a matter of judicious selection and routine optimization which is well within the purview of the skilled artisan. Please note that the topical application of such an extract gel preparation would intrinsically provide one or more of the functional effects instantly claimed, including with respect to preventing such skin afflictions.

Thus, the invention as a whole was clearly *prima facie* obvious over the references (and, if necessary, the admitted state of the art) especially in the absence of evidence to the contrary.

Claims 14-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Uchiyama et al. (JP 2001122763 - full computer-assisted English translation enclosed) in view of Barros et al. (Ciencia e Cultura, 1996) and Desmarchelier et al. (Planta Med, 1997), and further in view of Wheeler (US 6,165,479) and, if necessary, the admitted state of the art.

Uchimyama et al. beneficially teach a topical skin composition (e.g., in the form of a lotion, cream, etc.) comprising an extract of *Pothomorphe umbellata*.(including an alcoholic extract such as an ethanolic or methanolic extract - please note, as evidenced by Barros et al. and Desmarchelier et al., such an alcoholic extract would inherently comprise the naturally occurring compound 4-nerolidylcatechol) as an active skin therapeutic ingredient therein (e.g., useful against skin aging caused by ultraviolet rays among other therapeutic effects), as well as

topically applying such a composition to the skin. Uchimyama et al. also beneficially teach that the extract composition has antioxidant activity (i.e., oxygen-eliminating ability) - such as instantly disclosed (see entire English translation including paragraphs [0007] - [0016], [0021], [0028], [0034]-0035], [0037], and Tables).

The Barros et al. and Desmarchelier et al. references each beneficially teach a composition comprising an alcoholic (ethanolic - Barros et al; methanolic - Desmarchelier et al) extract of *Pothomorphe umbellata* - whereby the extracts demonstrate strong antioxidant activity (such as instantly disclosed) which contain the compound 4-nerolidylcatechol - apparently within the instantly claimed percentage range (as best understood) - therein (see entire documents including *Abstract* and *Materials and Methods*).

None of the above references, including Uchimyama et al., expressly teach providing the skin therapeutic *Pothomorphe umbellata* extract within a skin gel composition - including one containing carboxymethylcellulose, propylene glycol, and methylparaben, as instantly claimed.

Wheeler beneficially teaches that carboxymethylcellulose, propylene glycol, and methylparaben are well known conventional ingredients within skin therapeutic compositions such as skin gels, including those containing an antioxidant therein (see entire reference including col 2, line 58 - col 4, line 67). Further, as readily admitted by Applicants, the instantly claimed dermocosmetic composition can be prepared in accordance with prior art methods for topical use - such as one containing carboxymethylcellulose, propylene glycol, and methylparaben (see, e.g., page 11, lines 1-5).

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to incorporate an alcoholic (e.g., ethanolic or methanolic) extract of *Pothomorphe umbellata* within the skin therapeutic composition (having antioxidant activity) as taught by Uchimyama et al, especially since Uchimyama et al. beneficially teaches that ethanolic and methanolic solvents are effective solvents to employ, and Barros et al. and Desmarchelier et al. beneficially teaches that such alcoholic solvents provide a *Pothomorphe umbellata* extract having strong antioxidant activity (in addition, it should again be noted that, as evidenced by Desmarchelier et al., such an alcoholic extract would inherently comprise the naturally-occurring compound 4-nerolidylcatechol therein). It would further have been obvious to one of ordinary skill in the art at the time the claimed invention was made to incorporate such a *Pothomorphe umbellata* extract into a conventional skin therapeutic formulation (e.g., as an effective antioxidant) - including a skin gel, containing the commonly-employed skin care ingredients carboxymethylcellulose, propylene glycol, and methylparaben therein based upon the beneficial teachings provided by Wheeler, as well as (if necessary) the admitted state of the prior art, with respect to their well known conventional use therein, as discussed above. Accordingly, the adjustment of this and other types of conventional working conditions (e.g., determining an appropriate amount range of such conventional ingredients therein) is deemed merely a matter of judicious selection and routine optimization which is well within the purview of the skilled artisan.

Thus, the invention as a whole was *prima facie* obvious over the references (and, if necessary, the admitted state of the art) especially in the absence of evidence to the contrary.

Conclusion

No claim is allowed.

The prior art made of record and not relied upon is considered pertinent to Applicants' disclosure. **In addition (if not already cited by the Examiner within the enclosed Notice of References: PTO-892), it is requested that Applicants provide a copy of the prior art references cited in the paragraph bridging pages 6-7 of the instant specification in response to this Office action (the Examiner was unable to obtain at least some of the discussed references therein, due to the limited information provided within this paragraph) as these prior art references also appear pertinent to Applicants' disclosure (the 1999 reference by ROPKE concerning the topical application of an extract of *Pothomorphe umbellata* roots to the skin of hairless mice would appear to be particularly pertinent).**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher R. Tate whose telephone number is (571) 272-0970. The examiner can normally be reached on Mon-Thur, 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on (571) 272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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